

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ILLINOIS TOOL WORKS INC.,)
)
)
Plaintiff,)
)
)
v.) Civil Action No. 06-054-GMS
)
)
)
FRITO-LAY NORTH AMERICA, INC, f/k/a)
RECOT, INC.,)
)
Defendant.)
)

ANSWER

Defendant, Frito-Lay North America, Inc. (“Frito-Lay”), formerly known as Recot, Inc., by and through its undersigned counsel, answers the Complaint of Plaintiff, Illinois Tool Works, Inc. (“Plaintiff”), as follows:

1. Frito-Lay admits that Plaintiff purports to plead a cause of action pursuant to 35 U.S.C. § 146 to review a Final Decision and Decision on Motions dated November 29, 2005, entered by the Board of Patent Appeals and Interferences (the “Board”) of the United States Patent and Trademark Office (“USPTO”) in Patent Interference No. 105,173 (the “173 Interference”). Frito-Lay further admits that Plaintiff filed its Complaint within the administrative deadline for filing a civil action pursuant to 35 U.S.C. § 146.
2. Frito-Lay admits that Plaintiff purports to invoke subject matter jurisdiction under 35 U.S.C. § 146 and 28 U.S.C. §§ 1331 and 1338(a).
3. Frito-Lay lacks sufficient information to admit or deny the allegations in paragraph 3 of the Complaint and therefore denies same.

4. Frito-Lay admits the allegations contained in paragraph 4 of the Complaint.
5. Frito-Lay admits that venue is proper in this district pursuant to 28 U.S.C. § 1391(b).
6. Frito-Lay admits that it is the owner of the entire right, title and interest in and to U.S. Patent No. 5,972,396 (the “‘396 patent”), entitled “Flexible Package Having a Re-closable Zipper,” which was duly and properly issued by the USPTO on October 26, 1999. Frito-Lay admits that the document attached as Exhibit A to the Complaint appears on its face to be a copy of the ‘396 patent. Frito-Lay further admits that it is the assignee and owner of the entire right title and interest in and to U.S. Patent Application Serial No. 09/372,646 (the “‘646 application”), entitled “Flexible Package Having a Re-closable Zipper,” which was filed on August 12, 1996. Frito-Lay admits that Marc A. Jurgovan and Martin B. Diehl are the named inventors for both the ‘396 patent and the ‘646 application. Frito-Lay further admits that Recot was identified by Party Jurgovan as the real party in interest in the ‘173 interference. Frito-Lay denies the remaining allegations contained in paragraph 6 of the Complaint.
7. Frito-Lay admits that the inventors named for U.S. Application No. 09/481,723 (the “‘723 application”), entitled “Pinch Grip Zipper” and filed on January 12, 2000 are Ronald L. Ramsey, Arthur Malin, Robert Hogan, Lawrence Share and Richmond M. Scott. Frito-Lay further admits that Illinois Tool Works was identified as the real party in interest by Party Ramsey in the ‘173 interference. Frito-Lay lacks sufficient information to admit or deny the remaining allegations in paragraph 7 of the Complaint and therefore denies same.
8. Frito-Lay admits the allegations contained in paragraph 8 of the Complaint.
9. Frito-Lay admits the allegations contained in paragraph 9 of the Complaint.
10. Frito-Lay admits the allegations contained in paragraph 10 of the Complaint.

11. Frito-Lay admits that in the November 29, 2005 Decision, the Board determined, *inter alia*, that: (a) priority as to counts 1 and 2 should be awarded to Jurgovan and not to Ramsey; (b) that Ramsey derived the subject matter of Counts 1 and 2 from Jurgovan; (c) Jurgovan is entitled to the Jurgovan '396 patent and the Jurgovan '646 application; and (d) that the issue of patentability based on the prior art did not have to be addressed. Frito-Lay denies the remaining allegations in paragraph 11 of the Complaint.

12. Frito-Lay admits that Plaintiff purports to seek review and reversal of the Board's November 29, 2005 Final Decision and a Decision of Motions pursuant to 35 U.S.C. § 146. Frito-Lay denies the remaining allegations contained in paragraph 12 of the Complaint.

PLAINTIFF'S PRAYER FOR RELIEF

Frito-Lay denies that Plaintiff is entitled to the relief it seeks or any relief at all for the allegations made in the Complaint.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief may be granted.
2. ITW is not entitled to relief because Frito-Lay is entitled to priority of invention.

PRAYER FOR RELIEF

WHEREFORE, Frito-Lay prays that this Court enter judgment:

- A. dismissing the Complaint with prejudice, and denying each and every prayer for relief contained therein;
- B. affirming the November 29, 2005 Final Decision and Decision on Motions of the Board of Patent Appeals and Interferences in Interference No. 105,173;
- C. awarding Frito-Lay its costs and attorneys fees; and

D. awarding Frito-Lay such further relief as the Court shall deem necessary, just or proper.

Dated: July 7, 2006

Respectfully Submitted,

FRITO-LAY NORTH AMERICA, INC.

By: /s/ John W. Shaw

John W. Shaw (ID# 3362)
YOUNG CONAWAY STARGATT &
TAYLOR, LLP
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19899-0391
Telephone: (302) 571 6600
jshaw@ycst.com

Attorneys for Defendant
Frito-Lay North America, Inc.

Of Counsel:

Joseph A. Hynds
Glenn E. Karta
ROTHWELL, FIGG, ERNST
& MANBECK
1425 K Street NW, Suite 800
Washington, DC 20005
(202)-783-6040

CERTIFICATE OF SERVICE

I, John W. Shaw, Esquire, hereby certify that on July 7, 2006, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

William M. Lafferty, Esquire
Morris, Nichols, Arsh & Tunnell LLP
1201 N. Market Street
Wilmington, DE 19801

I further certify that I caused a copy of the foregoing document to be served by hand delivery on the above-listed counsel of record and on the following non-registered participants in the manner indicated:

BY FEDERAL EXPRESS

Gerald Levy, Esquire
Pitney Hardin LLP
7 Times Square, 20th Floor
New York, NY 10036

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ John W. Shaw

John W. Shaw (No. 3362)
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, DE 19801
(302) 571-6600
jshaw@ycst.com